

United States District Court for the  
Northern District of Illinois  
EASTERN Division

CH

Jeffery LATHAM #B30158  
v.  
Joseph Burke et al

case NO-08C0303

Notice of Appeal

FILED

APR 11 2008 *aw*  
Apr 11 2008  
MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

Notice is hereby given that I JEFFERY LATHAM, Plaintiffs  
in the above named case, hereby appeal to the United States  
District Court, from the final judgment entered in this action  
on the 2 12 - 2008

(s) Jeffery Latham  
#B-30158

STATE OF ILLINOIS )  
 ) SS  
 COUNTY OF Cook )

### AFFIDAVIT

I, Jeffery Latham being first duly sworn under oath depose and state that the foregoing is true and correct and made upon my personal knowledge and I am competent to testify thereto.

Plaintiffs is Filing Pro se

Plaintiffs did not receive notice of dismissal until 2-24-08  
Hill Correctional Center does not treat Civil legal mail  
as Priority legal-mail.

Plaintiff cannot attend Law Library as needed to Research  
Cases, only once a week,

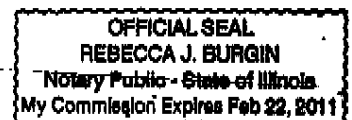
Hill Correctional Center refuses to supply any legal -  
materials, Therefore Plaintiff has to wait 14 days  
to buy legal material to take care of legal matters.

Plaintiffs is trying to show this Court that  
this lateness of Filing Notice of appeal is not  
due to Plaintiff negligence. Hill Corr Center Law  
Library is often closed. there is only one Law Clerk

Jeffery Latham  
 AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME  
 THIS 3<sup>rd</sup> DAY April, 2008

Rebecca J. Burgin  
 NOTARY PUBLIC



### AFFIDAVIT OF SERVICE

I, Jeffery Latham, state that I served a copy of the document to which this affidavit is attached upon each party, or, if represented by counsel, upon the attorney of record for said party(ies) by enclosing the same in a sealed envelope plainly addressed as is disclosed by the pleadings of record herein and by depositing each of such envelopes in the box designated for United States mail at Hill Correctional Center, Galesburg Illinois, together with the appropriate request to the prison official responsible to affix fully prepaid postage thereon, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Jeffery Latham  
(Signature)

### VERIFICATION

I, Jeffery Latham, the undersigned, certify and state that:

1. I am the (Petitioner/Respondent) in the above captioned legal matter.
2. I have read the foregoing application and have knowledge of its contents;

and

3. Under penalties as provided by law pursuant to sec. 1-109 of the Code of Civil Procedure, I certify that the statements set forth in the foregoing motion and this affidavit are true and correct except as to matters therein stated to be on information and belief, and as to such matters I certify that I believe the same to be true.

Jeffery Latham  
(X our signature)

**SEVENTH CIRCUIT COURT OF APPEALS INFORMATION SHEET**

Include the names of all plaintiffs (petitioners) and defendants (respondents) who are parties to the appeal. Use a separate sheet if needed.

NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION DOCKET NUMBER: 08 cv 303

PLAINTIFF (Petitioner)

v.

DEFENDANT (Respondent)

Latham/appellant	Burke/appellee
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(Use separate sheet for additional counsel)

PETITIONER'S COUNSEL		RESPONDENT'S COUNSEL	
Name	Jeffery Latham	Name	
Firm	pro-se #B-30158	Firm	Il. Dept. Of Corrections
Address	Hill - HIL P.O. Box 1700 Galesburg, Il. 61401	Address	100 West Randolph Suite 4-200 Chgo.Il. 60601
Phone		Phone	

Other Information			
District Judge	Holderman	Date Filed in District Court	2/12/08
Court Reporter	C. Conway X-5594	Date of Judgment	2/12/08
Nature of Suit Code	555	Date of Notice of Appeal	4/11/08

COUNSEL: Appointed ☐ Retained ☐ Pro Se ☒

FEE STATUS: Paid ☐ Due ☒ IFP ☐  
IFP Pending ☐ U.S. ☐ Waived ☐

Has Docketing Statement been filed with the District Court Clerk's Office? Yes ☐ No ☒

If State/Federal Habeas Corpus (28 USC 2254/28 USC 2255), was Certificate of Appealability:

Granted ☐ Denied ☐ Pending ☐

If Certificate of Appealability was granted or denied, date of order: \_\_\_\_\_

If defendant is in federal custody, please provide U.S. Marshall number (USM#): \_\_\_\_\_

**IMPORTANT: THIS FORM IS TO ACCOMPANY THE SHORT RECORD SENT TO THE CLERK OF THE U.S. COURT OF APPEALS PURSUANT TO CIRCUIT RULE 3(A). Rev 04/01**

## United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	James F. Holderman	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	08 C 303	DATE	2/12/2008
CASE TITLE	Jeffery Latham vs. Joseph Burke, et al.		

## DOCKET ENTRY TEXT

Plaintiff Jeffery Latham's application for leave to proceed *in forma pauperis* ("IFP") [3] is denied. Latham's complaint [1] is dismissed with prejudice as time-barred.

■ [ For further details see text below.]

Notices mailed.

## STATEMENT

Requests to proceed IFP are reviewed under 28 U.S.C. § 1915. To ensure that indigent litigants have meaningful access to the courts, § 1915 allows an indigent litigant to commence an action in federal court without paying the administrative costs of the lawsuit. *Denton v. Hernandez*, 504 U.S. 25, 27 (1992); *Neitzke v. Williams*, 490 U.S. 319, 324 (1989). The court is required to deny a request to proceed IFP if (1) the allegation of poverty is untrue, (2) the action is frivolous or fails to state a claim, or (3) the action seeks monetary relief against an immune defendant. 28 U.S.C. § 1915(e)(2); *see Neitzke*, 490 U.S. at 324.

Latham's complaint fails to state a claim because the face of the complaint demonstrates that Latham's claim is time-barred. The timeliness of a cause of action under 42 U.S.C. § 1983 is governed by the state's statute of limitations for personal injury. *Jenkins v. Village of Maywood*, 506 F.3d 622, 623 (7th Cir. 2007). In Illinois the statute of limitations for personal injury actions is two years. 735 ILCS 5/13-202; *Evans v. City of Chicago*, 434 F.3d 916, 934 (7th Cir. 2006). Accordingly, civil rights actions brought in federal courts in Illinois are subject to a two-year limitations period. *Jenkins*, 506 F.3d at 623; *Evans*, 434 F.3d at 934. Sua sponte dismissal based on an affirmative defense is appropriate where the validity of the defense is apparent from the face of the complaint and so unmistakable that the action is frivolous. *Walker v. Thompson*, 288 F.3d 1005, 1010 (7th Cir. 2002). Here, Latham alleges injury arising from events that occurred in May 2005. Latham, however, did not file his complaint until January 2008. Latham's failure to file his complaint within two years of the events forming the basis of his complaint is fatal to his claim. Consequently, Latham's application to proceed IFP is denied, and his complaint is dismissed with prejudice.

Courtroom Deputy  
Initials:

APPEAL, PC, TERMED, VALDEZ

**United States District Court**  
**Northern District of Illinois - CM/ECF LIVE, Ver 3.1.3 (Chicago)**  
**CIVIL DOCKET FOR CASE #: 1:08-cv-00303**  
**Internal Use Only**

Latham v. Burke et al  
Assigned to: Honorable James F. Holderman  
Cause: 42:1983 Prisoner Civil Rights

Date Filed: 02/12/2008  
Date Terminated: 02/12/2008  
Jury Demand: None  
Nature of Suit: 555 Civil Rights (Prison  
Condition)  
Jurisdiction: Federal Question

**Plaintiff****Jeffery Latham**

represented by **Jeffery Latham**  
B-30158  
Hill - HIL  
P.O. Box 1700  
Galesburg, IL 61401  
PRO SE

V.

**Defendant****Joseph Burke****Defendant****Lt. Buczlowski****Defendant****LT. Davis****Defendant****Lt. Brown****Defendant****Lt. Sawyer****Defendant****Lt Givens****Defendant****J. Allen**  
*C/O*

**Defendant****Sgt. Grant****Defendant****Med-Tech Thomas****Defendant****Dee Battaglia***Warden***Service List**

represented by **Illinois Department of Corrections**  
 100 West Randolph, Suite 4-200  
 Chicago, IL 60601  
*ATTORNEY TO BE NOTICED*

**Prisoner Correspondence - Internal Use Only**

Email:

Prison1\_ILND@ilnd.uscourts.gov

*ATTORNEY TO BE NOTICED*

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
01/14/2008	<a href="#"><u>1</u></a>	RECEIVED Complaint and 11 copies by Jeffery Latham; (Attachment). (gej, ) (Entered: 01/15/2008)
01/14/2008	<a href="#"><u>2</u></a>	CIVIL Cover Sheet (gej, ) (Entered: 01/15/2008)
01/14/2008	<a href="#"><u>3</u></a>	APPLICATION by Plaintiff Jeffery Latham for leave to proceed in forma pauperis. (gej, ) (Entered: 01/15/2008)
01/14/2008	<a href="#"><u>4</u></a>	POST MARKED envelope for initiating document by Jeffery Latham (Document not scanned) (aew, ) (Entered: 01/15/2008)
02/12/2008	<a href="#"><u>5</u></a>	MINUTE entry before Judge James F. Holderman : Plaintiff Jeffery Latham's application for leave to proceed in forma pauperis ("IFP") <a href="#"><u>3</u></a> is denied. Latham's complaint <a href="#"><u>1</u></a> is dismissed with prejudice as time-barred. Civil case terminated. Mailed notice (am) (Entered: 02/12/2008)
03/05/2008	<del>1</del> <a href="#"><u>6</u></a>	MOTION by Plaintiff Jeffery Latham for enlargement of time instanter; (Attachment). (gej, ) (Entered: 03/10/2008)
04/11/2008	<a href="#"><u>7</u></a>	NOTICE of appeal by Jeffery Latham regarding orders <a href="#"><u>5</u></a> (Fee Due) (dj, ) (Entered: 04/16/2008)
04/16/2008	<a href="#"><u>8</u></a>	NOTICE of Appeal Due letter sent to counsel of record (dj, ) (Entered: 04/16/2008)